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No. 04 -108

In the
**Supreme Court of the United States**
October Term, 2004

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SUSETTE KELO, THELMA BRELESKY, PASQUALE CRISTOFARO, WILHELMINA and CHARLES DERY, JAMES and LAURA GURETSKY, PATAYA CONSTRUCTION LIMITED PARTNERSHIP, and WILLIAM VON WINKLE,
*Petitioners,*
v.
CITY OF NEW LONDON and NEW LONDON DEVELOPMENT CORPORATION,
*Respondents.*

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**On Petition for Writ of *Certiorari* to the Supreme Court of Connecticut**

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# BRIEF OF *AMICI CURIÆ* NEW LONDON LANDMARKS, INC., THE COALITION TO SAVE THE FORT TRUMBULL NEIGHBORHOOD, and NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF PETITIONERS ON THE MERITS

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*On the Brief*
Andrew R. Grainger
Martin J. Newhouse
December 3, 2004

## QUESTIONS PRESENTED

*Amici Curiæ* New London Landmarks, Inc., the Coalition to Save the Fort Trumbull Neighborhood, and New England Legal Foundation adopt the question presented by Petitioners Susette Kelo *et al.*:

> What protection does the Fifth Amendment's public use requirement provide for individuals whose property is being condemned, not to eliminate slums or blight, but for the sole purpose of "economic development" that will perhaps increase tax revenues and improve the local economy?

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# BRIEF OF *AMICI CURIÆ* NEW LONDON LANDMARKS, INC., THE COALITION TO SAVE THE FORT TRUMBULL NEIGHBORHOOD, and NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF PETITIONERS ON THE MERITS

## INTEREST OF *AMICI CURIÆ*

*Amici* seek to bring to the Court's attention their views, and the views of their supporters, concerning the importance of the public use requirement of the Fifth Amendment's Takings Clause, as applied to the states pursuant to the Fourteenth Amendments to the United States Constitution.[1]

1 Pursuant to Supreme Court Rule 37.6, counsel for *amici* states that

*Amicus Curiæ* New London Landmarks, Inc. ("NLL, Inc.") is a non-profit, membership-based Connecticut corporation that promotes the preservation and development of the entire urban environment of New London, Connecticut, including significant individual structures, streetscapes, neighborhoods, and open spaces. NLL, Inc. was formed in 1976, as a merger of two separate groups: the Union Railroad Station Trust, Inc., organized in 1973 to protest the impending demolition of New London's 1885 Henry Hobson Richardson-designed Union Station, and New London Landmarks, formed in 1975 to protest the New London Redevelopment Agency's plan to demolish eight buildings on Bank Street. NLL, Inc. is run by a volunteer Board of Directors along with a small professional staff. It actively promotes preservation through educational progams, publications, tours, and a historic plaque program. NLL, Inc. was the responsible agent in nominating eleven New London Neighborhoods to the National Register of Historic Places.

*Amicus Curiæ* the Coalition to Save the Fort Trumbull Neighborhood (the "Coalition") is a voluntary association made up of members of NLL, Inc., the New London Historical Society, the Fort Trumbull Neighborhood Association, college professors, and independent residents of the Fort Trumbull Neighborhood and greater New London generally. The Coalition was formed to oppose the taking by eminent domain and proposed demolition of the residences in the Fort Trumbull

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no counsel for any party authored this brief in whole or in part and that no person, other than *amici*, their members, and their counsel made a monetary contribution to the preparation of the brief. All parties have consented to the filing of this brief, and copies of the consents have been filed with the Clerk pursuant to Supreme Court Rule 37.3 (a).



neighborhood of New London that are at issue in this case. The primarily residential Fort Trumbull neighborhood may not consist of pre-Revolutionary buildings, buildings designed by famous architects, or homes of wealthy merchants, which are typically the subjects of historic designations. Dan Pearson, *Board asks Fort Trumbull homes be saved,* The [New London] Day, Feb. 28, 2000.[2] Nevertheless, the vernacular architecture of the area is esthetically pleasing and preserves important aspects of New London's cultural and social history, from the Italian immigrants who originally built the bulk of the neighborhood's homes, to the close-knit group of current residents. *Id.*

The Coalition sponsored an alternative development plan that would have achieved all of the benefits of Defendant-Respondent New London Development Corporation's ("NLDC") Municipal Development Plan for the Fort Trumbull area, while preserving the homes. *See* Dan Pearson, *Alternative plan would save Fort Neck homes,* The [New London] Day, Dec. 23, 1999, at B1;[3] Dan Pearson, *Group opposing Fort Trumbull demolition approves new plan,* The [New London] Day, Dec. 27, 1999.[4] The Coalition's plan, designed by John Ames Steffian, architect, urban designer, and former dean at the Rhode Island School of Design, would have replaced the NLDC's planned high-end townhouse development with mixed-income housing that would have allowed for preservation and renovation of the existing Fort Trumbull housing stock. *Id.* NLDC cursorily rejected the Coalition's alternative plan. Dan Pearson, *Alternative Fort Trumbull plan is rejected,* The [New London] Day,

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2 Included in the Appendix to this Brief at *Amici* Appendix 2.
3 Included in the Appendix to this Brief at *Amici* Appendix 3.
4 Included in the Appendix to this Brief at *Amici* Appendix 5.

Dec. 28, 1999.[5]

NLDC's immediate rejection of the Coaltion's alternative plan (several days after its submission), NLDC's rejection of several alternative plans by its own consultants that would have allowed for preservation of existing homes, and NLDC's commencement of voluntary purchases in the Fort Trumbull area before approval of its own plan demonstrate that NLDC did not intend to consider seriously any alternatives that would allow for the preservation of existing Fort Trumbull homes. *Kelo v. City of New London*, 268 Conn. 1, 9 n.6, 843 A.2d 500, 510, *cert. granted*, 125 S. Ct. 27 (2004); John Ames Steffian, *NLDC could save homes; it just doesn't want to*, The [New London] Day, Jan. 16, 2000;[6] Pearson, *Group opposing Fort Trumbull demolition approves new plan*, *Amici* Appendix 5; Pearson, *Alternative Fort Trumbull plan is rejected*, *Amici* Appendix 6. The Coalition's well thought-out alternative design plan relates to whether the specific condemnation was, in fact, reasonably necessary, which *Amici* and Petitioners contest. *See Kelo*, 268 Conn. at 168 n.26, 843 A.2d at 600 (Zarella, J. dissenting). *But see Kelo*, 268 Conn. at 82–92, 111–21, 843 A.2d at 552–58, 568–74 (majority decision) (condemnations reasonably necessary under highly deferential standard).

*Amicus Curiæ* New England Legal Foundation ("NELF") is a non-profit, public interest law firm, incorporated in Massachusetts in 1977. It is headquartered in Boston. Its membership consists of corporations, law firms, individuals, and others who believe in NELF's mission of promoting balanced economic growth for the United States and the New England region, protecting the free enterprise system, and

5 Included in the Appendix to this Brief at *Amici* Appendix 6.

6 Included in the Appendix to this Brief at *Amici* Appendix 7.



defending economic rights. NELF's more than 130 members and supporters include a cross-section of large and small corporations from all parts of New England and the United States. NELF's members are affected by the security of their real estate investments, which depend, in part, upon the extent to which public agencies and private entities endowed by state law with the power of eminent domain exercise that power with restraint, respecting property owners' long-term expectations. Furthermore, some of NELF's members are directly interested in the constitutional protections for owners of real estate because they own, finance, develop, and manage real estate. For those reasons, NELF's members are concerned about the issues presented this case.

NELF has regularly appeared in state and federal courts, as party or counsel, in cases raising issues of general economic significance to the New England and national business communities. *See, e.g., Nike, Inc. v. Kasky*, 539 U.S. 654 (2003); *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003); *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002); *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000); *UNUM Life Ins. Co. v. Ward*, 526 U.S. 358 (1999); *Smedley v. Department of Mental Retardation*, 270 Conn. 32, 850 A.2d 1007 (2004); *Vacco v. Microsoft Corp.*, 260 Conn. 59, 793 A.2d 1048 (2002). NELF has submitted briefs, as party or counsel, in state and federal courts, in several cases involving the Fifth Amendment's Takings Clause. *See, e.g., Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996); *Preseault v. United States*, 66 F.3d 1190 (Fed. Cir. 1995).

*Amici* believe that the Connecticut Supreme Court's divided decision unduly expands the circumstances in which a governmental or private entity with eminent domain powers may dispossess an owner of his or her property. In this

case, the eminent domain taking by NLDC of property in the Fort Trumbull neighborhood threatens to disrupt a vibrant community with a long history and architectural value for dubious and potentially ephemeral gains. *Amici Curiæ* therefore believe that this brief will provide an additional perspective to aid the Court in determining the extent to which the public use requirement of the Fifth Amendment's Takings Clause protects private property from ill-conceived schemes.

## SUMMARY OF ARGUMENT

The decision below in this case violates basic constitutional principles protecting property rights through the Fifth Amendment's public use requirement for eminent domain takings. While the attempted taking in this case should fail under any level of scrutiny at all, *Amici* argue that, in this case, heightened judicial scrutiny is consistent with this Court's precedents and is warranted. Here the evidence demonstrates that a taking is for a private benefit, for general, undefined economic benefits, and for an uncertain or unduly vague intended use. *Amici* further contend that the decision below is unduly deferential to agency determinations of the reasonable necessity of the condemnation to achieve that public benefit and that the takings were not reasonably necessary because plausible alternative development scenarios obviated the need for any taking.



## ARGUMENT

### I. Courts should apply heightened scrutiny to takings for a private benefit, for general, undefined economic benefits, or for an uncertain or unduly vague intended use.

As of the time of the trial in this case, NLDC had not determined how it would develop the property that it desired to take. *Kelo*, 268 Conn. at 9, 843 A.2d at 510. Nevertheless, NLDC intended to give at least a substantial portion of its interest in the property to a private developer. At the time of the trial, NLDC was negotiating to grant for-profit real estate developer Corcoran Jennison a 99-year lease on three major parcels in the project area (including the homes of several of the Petitioners) for nominal consideration of $1 per year. *Id.* This case clearly raises significant concerns about private benefits from the taking.

Moreover, while NLDC projected an increase in jobs and local tax revenue for its entire development plan area, it did not attribute a specific portion of those alleged benefits to the destruction of the existing residential neighborhood. *Id.* The dissent below concluded convincingly that there was no evidence of the need for the takings:

> The record . . . fails to establish that there was any momentum in the project from a development standpoint or any reasonable development prospects for parcels [that included the Petitioners' properties] at the time of the takings. Evidence to the contrary consists of vague predictions of future demand.

*Kelo*, 268 Conn. at 167, 843 A.2d 599 (Zarella, J. dissenting).

*Amici* support the Petitioners' contention that takings for private economic development plans, especially those based on vague and uncertain projections such as these, contravene the Fifth Amendment's public use requirement. *See* Petition for *Certiorari* at 7–8. *See Kelo*, 268 Conn. at 121–22, 843 A.2d 574–75 (Zarella, J. dissenting).

Commentators suggest that discouragement and cynicism are often bred by takings that benefit private parties, even when full compensation is paid and when there is no evidence of favoritism. "In governmental condemnations for private use, the disruption of the sanctity of private property and the reductions in investment and productivity as a result of 'unsafe' [*i.e.*, insecure] title may outweigh the benefits obtained from the property's alternative use prompted by the transfer."[7] Cynicism about government motives in takings for private beneficiaries encourages cynicism about government generally and therefore decreases cooperation with legitimate government programs.[8]

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7 Donald J. Kochan, *"Public Use" and the Independent Judiciary: Condemnation in an Interest-Group Perspective*, 3 TEX. REV. L. & POL. 49, 87–88 (1998). *See* James Geoffrey Durham, *Efficient Just Compensation as a Limit on Eminent Domain*, 69 MINN. L. REV. 1277, 1307 (1985); Richard A. Epstein, *Takings, in* 3 *THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW* 561, 564 (Peter Newman ed., 1998); William B. Stoebuck, *A General Theory of Eminent Domain*, 47 WASH. L. REV. 553, 559 (1972) ("[T]ransfers [by eminent domain to private parties] tend more than transfers to the government to be for non-public purposes and so more or less tend to be suspect."); Dale F. Rubin, *The Public Pays, the Corporation Profits: The Emasculation of the Public Purpose Doctrine and a Not-for-Profit Solution*, 28 U. RICH. L. REV. 1311, 1318 (1994) (public perception of rife corruption and fraud associated with government involvement in railroad development led to anti-aid amendments to state constitutions).

8 *See* Susan Rose-Ackerman, *Corruption, in* 1 *THE NEW PALGRAVE*



Some concrete examples of adverse effects from takings for private beneficiaries include those resulting from the demolition of Boston's West End neighborhood (clearance of residents completed by 1960) and the creation of the Cross-Bronx Expressway in New York City (clearance of residents completed by 1954). *See* Nicole Stelle Garnett, *The Public Use Question as a Takings Problem*, 71 GEO. WASH. L. REV. 934, 953–55 (2003) (detailing urban redevelopment failures); Derek Werner, Note, *The Public Use Clause, Common Sense and Takings*, 10 B.U. PUB. INT. L.J. 335, 355–56 (2001) (citing examples of use of eminent domain to take property from the politically disadvantaged to give to the politically connected). Even proponents of urban renewal subsequently widely derided Boston's West End project, "because it bulldozed the homes of poor people and replaced them with an enclave for the wealthy." LAWRENCE W. KENNEDY, *PLANNING THE CITY UPON A HILL* 162–63 (1992). The luxury housing that largely replaced the vibrant mixed-ethnic neighborhood is now considered dated and unattractive. *Id.* at 165. A well respected sociological study of the West End concluded that the large-scale clearance occurred because the redevelopment agency valued the interests of the redeveloper and his luxury rental tenants over those of the community as a whole; in other words, the development was primarily for private use. HERBERT J. GANS, *THE URBAN VILLAGERS* 328 (1962). The cynicism about government motives fomented by the West End clearance continues to this day. KENNEDY at 164; THOMAS H. O'CONNOR, *BUILDING A NEW BOSTON* 134, 284 (1993).

The Cross-Bronx Expressway provides another illustration of the public costs of judicially unchecked

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*DICTIONARY OF ECONOMICS AND THE LAW*. 517, 519 (Peter Newman ed., 1998).

government power. James Geoffrey Durham, *Efficient Just Compensation as a Limit on Eminent Domain*, 69 MINN. L. REV. 1277, 1298–1300 (1985). The Expressway dislocated 1,530 East Tremont neighborhood families when an alternate route was available that was shorter and would have dislocated only 19 families and a private bus terminal facility, with a saving of $10 million in land acquisition costs. *Id.* Speculation as to the reasons for this choice by politically powerful New York City Planning Commissioner Robert Moses, the principal planner of the route, include "political corruption and whim exacerbated by stubbornness." *Id.* at 1299. In this case, NLDC gave short shrift to the Coalition's alternative development plan to save existing housing. Pearson, *Alternative Fort Trumbull plan is rejected, Amici* Appendix at 6. Similarly, Moses and leading New York politicians summarily dismissed the efforts of East Tremont residents to advocate for the cheaper, less disruptive alternative. Durham, 69 MINN. L. REV. at 1299. Another similarity is that the taking agencies in both cases were in a rush to move residents out despite the lack of any immediate need for the property. *Kelo*, 268 Conn. at 167, 843 A.2d 599 (Zarella, J. dissenting) (takings based on predictions of future demand); Durham, 69 MINN. L. REV. at 1299 n. 149 (East Tremont residents removed in 1954, highway construction not completed until 1960).

Adverse public policy effects inevitably flow from property takings that disrupt lives without providing a clear public advantage and that benefit powerful individuals or corporations. In this case, the eminent domain takings are for a private benefit, for an uncertain and vague intended use, and promise to provide, at best, a general, undefined economic benefit. Each of these circumstances, standing alone, would warrant heightened judicial scrutiny of the taking. *See, e.g.,*



Garnett, 71 GEO. WASH. L. REV. at 964 (courts should review public use challenges under the standards applicable to regulatory exactions to determine whether government can demonstrate that the taking is reasonably necessary for the taking agency's stated public purpose); Thomas W. Merrill, *The Economics of Public Use*, 72 CORNELL L. REV. 61, 87–88, 90 (1986) (heightened scrutiny warranted in takings with potential for secondary rent seeking, which includes those that benefit one or a few private parties); Stephen J. Jones, Note, *Trumping Eminent Domain Law: An Argument for Strict Scrutiny Analysis under the Public Use Requirement of the Fifth Amendment*, 50 SYRACUSE L. REV. 285, 306 (2000) (urging strict scrutiny of takings for private parties); Jennifer Maude Klemetsrud, Note, *The Use of Eminent Domain for Economic Development*, 75. N.D. L. REV. 783, 799–802 (1999) (heightened scrutiny to determine whether condemnation will be used for the proffered public purpose); Jennifer J. Kruckeberg, Note, *Can Government Buy Everything? The Takings Clause and the Erosion of the "Public Use" Requirement*, 87 MINN. L. REV. 543, 570 (2002) (calling for heightened scrutiny of public use when private parties receive the primary benefit of a taking); Peter J. Kulick, Comment, *Rolling the Dice: Determining Public Use in Order to Effectuate a "Public-Private Taking"—A Proposal to Redefine "Public Use"*, 2000 L. REV. MICH. ST. U. DET. C.L. 639, 680 (strict scrutiny warranted for economic development takings);[9] Laura

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9 *Amici* encourage courts to consider all relevant factors, including the following, when evaluating a taking agency's stated public purpose:

> (1) the amount of deference courts are to give to the municipality's proposed legislative action; (2) the economic costs of the takings; (3) the economic benefits of the proposed development; and, finally (4) the private market alternatives that are available to acquire the necessary realty.

Mansnerus, Note, *Public Use, Private Use, and Judicial Review in Eminent Domain*, 58 N.Y.U. L. REV. 409, 444–45 (1983) (suggesting *de novo* review and "actual rationality" standard); Elizabeth A. Taylor, Note, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain*, 36 B.C. L. REV. 1061, 1083–85 (1995) (urging courts to review closely takings benefiting private parties).[10]

These suggestions for heightened scrutiny in cases that benefit a small group of private beneficiaries are consistent with this Court's decision involving a significant and direct positive impact on a broad public class in *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 241 (1984) (upholding "the exercise of the eminent domain power [when it] is rationally related to a conceivable public purpose"). *Midkiff* concerned the unusual circumstance, brought about by Hawaii's unique history, of a high degree of concentration in land ownership and a huge statewide population of long-term tenants. *Id.* at 232–33. This Court explicitly distinguished that situation from this case and others where the potential private benefits are clear and the public benefits obscure. *Id.* at 245. Because takings for a private benefit, for general, undefined economic benefits, and for an uncertain or unduly vague intended use, often cause public cynicism, long-term resentment, undue expense, and deterioration of secure property rights, courts should apply heightened scrutiny in such takings.

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Kulick, 2000 L. REV. MICH. ST. U. DET. C.L. at 679.

10 The majority decision below indeed acknowledged "that many commentators within the academic community . . . have addressed the issue of whether economic development satisfies the constitutional public use requirement. . . . [*M*]*ost* [*commentators*] . . . *tend to express alarm at what they consider to be a situation rife for abuse of the eminent domain power.*" *Kelo*, 268 Conn. at 53, 843 A.2d at 535 (emphasis added).



## II. Appropriate review of the condemnation of the Fort Trumbull residential neighborhood demonstrates that it was not reasonably necessary to effectuate NLDC's overall redevelopment plan and fails to comply with the public use requirement.

With its long-term rent of a significant portion of the development area to a for-profit entity for nominal consideration and its vague plans for much of the remainder, NLDC's proffered purpose fails to meet the public use requirement under any reasonable standard of scrutiny, even if the standard is lower than the heightened scrutiny that *Amici* argue should apply. The NLDC plan fails the public use requirement test under ordinary rational-relation scrutiny. It is only because the Connecticut Supreme Court applied a test of extreme deference that NLDC's proposed condemnation met with that court's approval.[11]

The Petitioners challenged below the reasonable necessity of the condemnation of their properties, in part because of the availability of reasonable alternative plans that would not have required the taking and demolition of their

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11 In a case of first impression in Connecticut, the court below allowed the property owners only extremely limited options to contest the public use of an economic development plan that includes property takings: "'[T]he plaintiff [has] the burden of establishing that the taking . . . was unreasonable, in bad faith or an abuse of power.'" *Kelo*, 268 Conn. at 88, 843 A.2d at 556 (quoting *Hall v. Weston*, 167 Conn. 49, 66, 355 A.2d 79, 87 (1974)). The court, further, effectively confined unreasonableness to a determination that the reason given by the taking agency was pretext. *Kelo*, 268 Conn. at 119, 843 A.2d at 573. The court utilized the same unduly deferential standard in its review of the components of the taking agency's determination, including the reasonable necessity for condemning the specific properties and reasonable foreseeability of an eventual public use for condemned property. *Kelo*, 268 Conn. at 90, 95, 98, 119, 843 A.2d at 557, 560–61, 573.

homes. *Kelo,* 268 Conn. at 82–92, 111–21, 843 A.2d at 552–58, 568–74 (majority decision), at 168 n.26, 843 A.2d at 600 (Zarella, J. dissenting) (agreeing with Petitioners that taking of residences on Parcel 4A was not reasonably necessary). The Connecticut Supreme Court's analyzed the reasonableness of and necessity for the condemnations solely on the basis of state statutory interpretation, however, disregarding similar federal constitutional norms under the Fifth Amendment's public use requirement.

*Amici* contend that courts must independently determine that eminent domain takings are reasonably necessary in order to satisfy the public use requirement. A proposed taking would violate the public use requirement if, for example, reasonable alternative development scenarios would permit the public project to go forward without the protested condemnations. At least one author has suggested that the seventeenth and eighteenth century civil law jurists (Grotius (Huigh de Groot), Samuel Pufendorf, Emerich de Vattel, and Cornelius van Bynkershoek), whose work was familiar to the Founding Fathers, intended "that the exercise of eminent domain power should be restricted to somewhat more necessitous situations than should other governmental powers." Stoebuck, at 595. *See* Kulick, 2000 L. REV. MICH. ST. U. DET. C.L. at 645. *See also* Garnett, 71 GEO. WASH. L. REV. at 964 (suggesting judicial review of reasonable necessity of taking). In less "necessitous" situations, the government should be able to purchase land for public purposes like private parties.

In this case, the Coalition and NLDC's own consultants proposed a number of plausible alternative development scenarios that would have allowed the entire NLDC project to go forward successfully without condemning the Petitioners' properties. *Kelo,* 268 Conn. at 9 n.6, 843 A.2d at 510; Steffian,



*NLDC could save homes; it just doesn't want to, Amici* Appendix 7. Therefore, the takings in this case were not reasonably necessary and violated the Fifth Amendment's public use requirement.

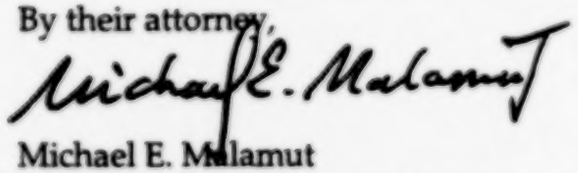
## CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Connecticut Supreme Court below and grant such additional relief as requested by Petitioners Susette Kelo *et al.*

Respectfully submitted,

NEW LONDON LANDMARKS, INC.,
THE COALITION TO SAVE THE FORT TRUMBULL NEIGHBORHOOD,
and
NEW ENGLAND LEGAL FOUNDATION

By their attorney,



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Dated: December 3, 2004

## *AMICI* APPENDIX

THE DAY, MONDAY, FEBRUARY 28, 2000

# Board asks Fort Trumbull homes be saved

By DAN PEARSON
Day Staff Writer

New London — One month before the City Council approved the plan to allow demolition in Fort Trumbull, the city's Historic District Commission and Design Review Board asked it not to.

In a letter written in December to both the City Council and the New London Development Corp., the commission said it had voted unanimously to recommend the NLDC's Fort Trumbull Municipal Development Plan be modified to retain a majority of existing houses, to require that new development be aesthetically integrated into the existing neighborhood, and to [illegible] residential properties [illegible] to remain in the Fort Neck area.

In January all city agencies, including the City Council, approved the NLDC's plan which would clear existing housing and property to make way for a hotel, conference and fitness center, townhouse community and research and development offices.

Edith Lidestri, commission's chairwoman, said the commission originally recommended the city and the NLDC preserve any building in the Fort Trumbull area that might be eligible for the National Register. But the city's preservation organization, acting on behalf of the Connecticut Historical Commission, determined that the area was not eligible because the buildings were not "pre-Revolutionary, built by famous architects, [illegible]."

The commission [illegible] to write the letter after doing their own research and after hearing that demolition was opposed by the Landmarks group. Landmarks, which has been instrumental in preserving city landmarks such as Union Station, said in December that it supported the NLDC's overall goals but opposed the "wholesale demolition" of Fort Trumbull.

Landmarks determined that "although the buildings did not meet the high standards" required of the Register, "the Italians who had lived in the Fort Trumbull area had left behind a legacy of architecturally and historically significant buildings" and that the area had archaeological potential, especially at the former [illegible] Wharf in [illegible]. [illegible] demolition [illegible] and asked the city [illegible] NLDC to postpone demolition until it had further time to review the area.

"We wanted to support Landmarks' recommendation. That's our job, preserving our history," said Lidestri. "As far as demolition was concerned, we had to take a stand and look after the buildings. We don't like demolition."

While members of Landmarks have joined with other city groups and residents to oppose the demolition as part of the Coalition to Save Fort Trumbull Neighborhood, Lidestri said it is not her commission's responsibility to take a continued and active stand against the demolition. [illegible] "We don't [illegible] have already [illegible]," she said. "We can't get involved otherwise."

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THE DAY, THURSDAY, DECEMBER 23, 1999

# Alternate plan would save Fort Neck homes

## Plan includes hotel, offices with Fort Trumbull houses

By SAM PEARSON
Day Staff Writer

New London — A member of the Coalition to Save Fort Trumbull Neighborhood has designed an alternative development plan that would preserve homes in the Fort Neck area, which the New London Development Corp. plans to demolish.

John Steffian, an architect, urban designer and coalition member, said Wednesday that he has produced a plan that would preserve historic structures and the existing housing stock in Fort Trumbull while leaving room for the hotel, conference and fitness center, and biotech and bioscience offices and labs planned by the NLDC.

In a development plan for the area, the NLDC and its consultants have said that all the homes in the area must be demolished to make the development economically viable.

Members of the New London County Historical Society, New London Landmarks, residents and neighborhood groups formed the coalition in November to protest the demolition and to provide an alternative plan. The coalition has argued that the NLDC never considered an alternative because it began purchasing homes in the area before a consultant offered them options.

David Goebel, the NLDC's chief operating officer, said the NLDC plans to pursue eminent domain to obtain houses that owners refuse to sell.

"Until their plan is approved (by the City Council) they don't have eminent domain, so they shouldn't be threatening. But if (Goebel) said they were going to do it, they probably want to do it," Steffian said. "I just wanted to show that there is another approach and another plan that integrates the existing community."

Steffian, a Waterford resident and architecture professor with extensive urban planning experience, said the main difference between his plan and the NLDC's is that he proposes "blocks and lots" instead of clustered "pod" housing. In addition, instead of proposing the high-end townhouse community planned by the NLDC, Steffian proposes a mix of homes and apartments that would suit a range of incomes.

See PROPOSAL, page B4



# Proposal saves houses in Fort Trumbull area

From B3.

Steffian proposes constructing three- and four-bedroom homes with apartments over the garages. The apartments would open up the neighborhood to rentals for those unable to buy homes.

"What is wrong with all people of all incomes living together? There's room in this plan for everyone," he said. "There is a way to do this that won't destroy the social fabric of the neighborhood."

Steffian also proposes high-end three-bedroom homes, as well as two-bedroom duplexes and apartments with first-floor garages. Where there are vacant lots, he plans to construct homes similar to those traditionally found in the neighborhood.

"Just take clues from the historical method of making lots and blocks and developing, so that you have a tight and compact community," said Steffian. "It's very viable. Everybody has yards, parking, and a short distance to the waterfront."

Following the NLDC plan for Fort Trumbull, Steffian includes a hotel, a town green, health club, and the bioscience and biotech offices. Steffian, like the NLDC, anticipates using fill to elevate the hotel in the flood plain. But unlike the NLDC, which plans to change roadways and flatten the area's terrain, he would utilize the landscape and the existing road structure.

Landmarks president Sally Ryan and Historical Society president Nield Oldham said Wednesday that they were satisfied with Steffian's design. They said the coalition will continue to protest the demolition by petitioning against it and speaking against it at public hearings. The coalition will hold its own public hearing to present its alternative plan.

"(Steffian's) plan shows that you can have everything NLDC is seeking and still save the neighborhood," Oldham said.

THE DAY, MONDAY, DECEMBER 27, 1999

# Group opposing Fort Trumbull demolition approves new plan

By DAN PEARSON
Day Staff Writer

**New London** — The Coalition to Save Fort Trumbull Neighborhood has voted to endorse a new development plan that would preserve housing in Fort Trumbull that is slated for demolition by the New London Development Corp.

Last week's vote to endorse the plan comes only days after John Steffian presented the coalition with a plan that would preserve historic structures and houses in Fort Trumbull while leaving room for the hotel, conference and fitness center, and biotech and bioscience offices and labs planned by the NLDC.

Steffian works for the Waterford architecture firm Steffian and Steffian LLC and is an architect, urban designer and former dean at the Rhode Island School of Design.

Instead of the high-end townhouse community proposed by the NLDC, Steffian proposes a mix of housing that would draw diverse peoples and incomes. Steffian would save existing housing and, where there are vacant lots in between housing, fill in with aesthetically compatible homes.

In their Municipal Development Plan for the area, the NLDC and its consultants have said that the homes and some historic structures would have to be demolished to make the development economically viable. David Goebel, the NLDC's chief operating officer, told the coalition that the NLDC would use eminent domain to obtain any housing that residents refused to sell.

"It is not at all necessary to (demolish) to make this a nice community," said Steffian. "There is room here for everyone."

## Historical society

The coalition is comprised of members of the New London County Historical Society, New London Landmarks, the Fort Trumbull Neighborhood Association, the Neighborhood Network and residents. Steffian is a member of the coalition, New London Landmarks and the historical society.

The coalition also opposes the demolition because it believes the NLDC never considered a plan that would not involve it. The NLDC began purchasing homes in the area before a consultant offered them other options.

"In addition to preserving the present neighborhood (which has historical significance), Steffian's plan includes a realistic blend of housing, retail and recreational space," said Kathleen Mitchell, president of the network and a member of the coalition. "The major point that Mr. Steffian's site plan makes is that all significant features of the (Municipal Development Plan), as presented by the NLDC, can be accomplished without sacrificing the neighborhood."

# Alternative Fort Trumbull plan is rejected

THE DAY, TUESDAY, DECEMBER 26, 1989

## NLDC says no to the proposal for saving homes

By DAN PEARSON
Day Staff Writer

New London — The New London Development Corp. will not consider a plan that would save houses slated for demolition of homes in the Fort Trumbull neighborhood because it does not satisfy environmental and aesthetic requirements.

But the designer of the alternative plan said Thursday that the basic premise of the plan, of retaining housing and creating a mixed-income community, is still a viable option.

On Thursday, David Goebel, chief operating officer of the NLDC, said that architect and urban designer John Stefflan's plan for the Fort Neck neighborhood would not work because it violates a restriction placed on the NLDC by the state Department of Environmental Protection.

The NLDC, in its Municipal Development Plan, has proposed developing an upscale townhouse community, hotel, fitness and conference center, and biotech offices in the Fort Trumbull neighborhood. The DEP, said Goebel, has limited the townhouse community to 80 units for environmental impact reasons.

Goebel also said that Stefflan's plan would not create the "vistas" needed to make the redeveloped fort area and hotel economically viable or attractive to a developer.

The development of the community, said Goebel, will require the demolition of the existing houses in Fort Trumbull.

Stefflan is a member of the Coalition to Save Fort Trumbull that has been working for the last month to prevent the demolition and to present the state and city with an alternative plan.

Last week, Stefflan, an architect and urban designer who served as chief project designer for the Government Center project in Boston and is a former dean of the Rhode Island School of Design, completed a plan that would retain homes and the hotel and other developments.

Instead of using the "pod" style housing envisioned by the NLDC, Stefflan has proposed working with the original design of Fort Trumbull to create a mixed income "village" with upscale homes, moderate-income homes and apartments. Stefflan made a compact design by putting apartments and duplexes above garages.

But in proposing a mixed income "lots and blocks" style of residential development, based on the existing housing pattern, Stefflan's plan exceeded the 80-unit cap.

Goebel said that the "jam packed" concentration of housing would not be in compliance with the overall design of the fort area. If the NLDC were to use Stefflan's plan, Goebel said people traveling through Fort Trumbull would feel like they were approaching a Motel 6 instead of a luxury conference center.

Stefflan said he was not aware of the DEP housing cap, but said he could redesign the plan to comply. His plan, he said, still shows that alternative methods that do not involve demolition could be used while the development of the hotel and other developments could be carried through.

Stefflan disagreed with Goebel that the coalition plan was not aesthetically appropriate as an entranceway to the hotel and conference center. He envisions a village community with village green and shops that, he said, would serve as an attractive and welcoming entranceway to the hotel.

"(With my plan) you would have views of the whole place. It would bring you through the village right to the fort. That is the setting, that is the context of the whole thing," said Stefflan. "...There are a lot of ways to do this."

Stefflan said he will refine his plan before it goes to a public hearing later in January.

THE DAY, SUNDAY, FEBRUARY 18, 2000

PLAN FOR FORT TRUMBULL

# NLDC could save homes; it just doesn't want to

By JOHN AMOS STOFFLAN

The Coalition to Save the Fort Trumbull Neighborhood has asked only one question of the New London Development Corp.: "Why can the Fort Trumbull neighborhood *not* be saved?"

NLDC consultants and staff, including CEO David Goebel, failed again to answer this question at a meeting last December. Instead, the audience received the same patronizing formulaic "lectures." This had been the case as far back as the summer of 1998.

However, December's meeting saw one vital difference. Instead of being lulled into believing that Fort Trumbull residents might not be forced to face the specter of relocation – "Don't worry," residents had been told – the Coalition received Goebel's unequivocal nonanswer: All residents would be relocated and all houses demolished.

"Why can the Fort Trumbull neighborhood not be saved?" In all of this time citizens have had the benefit of only one single truly inclusionary public hearing at which then NLDC consultants Wallace, Roberts & Todd presented its now-familiar six alternative plans for the development of the Fort Trumbull Peninsula. Residents and many others from New London and surrounding towns spoke strongly in favor of alternative plan three, the only one of which envisioned retaining and incorporating the extant residential blocks.

The NLDC made no prior public announcement of its preference, so it was not until last fall that the public first had the opportunity to review the MDP draft. Imagine the dismay, then, when we discovered that deep within its nearly 3-inch built by the NLDC's "preferred development alternative," containing "positive elements of alternatives two, four, five and six," but unabling three entirely from consideration!

> Pressure on homeowners has continued unabated for two years, a carbon copy of discredited urban renewal policies of the 1950s and 1960s.

Citizens still seek an answer: "Why can the Fort Trumbull neighborhood *not* be saved?"

Shortly after Pfizer unveiled its welcome news to build a Global Research facility in early 1998, Fort Trumbull residents began to receive intimidating letters in which lurked the specter of eminent domain – and, possibly, lower selling prices – if they postponed relocation plans until the MDP draft became reality. Such pressures have continued unabated for almost two years, causing many to leave against their will. Recently the neighborhood Hispanic church has been enlisted to relocate; it is apparently particularly inimical to economic development to have religious institutions appear the sole holdouts to land clearance endeavors.

Such behavior is unconscionable. It's an anachronistic "carbon copy" of long-discredited urban renewal clearance policies of the 1950's and 1960's. By employing techniques of obfuscation and intimidation the NLDC has done much to degrade the uniquely vernacular appearance of this once close-knit neighborhood.

From the very start NLDC's intention has been to demolish the Fort Trumbull neighborhood, long before any MDP draft had been presented. Such intentions show an arrogant contempt for the community as well as for those citizens of New London and elsewhere who regard the phrase "social justice" as something more than mere empty rhetoric.

The NLDC is to be applauded for its zealous and unstinting efforts to create permanent job opportunities and increased revenues for the city, but it has from the beginning a marked aversion to inclusive public participation in the planning process.

Since we have yet to receive an answer from the NLDC, let alone a visual plan which the public could debate, my son and I developed an illustrative site plan for Fort Trumbull to show that all residents who wish to remain may do so and can comfortably co-exist with all of the economically desirable components that the MDP Draft envisions.

The plan includes bioscience research and development facilities, water dependent and related businesses, two marinas, a 200-room hotel and conference center, shopping and market facilities, and a health/fitness center. Provision has also been made for retaining two historic buildings in the Naval Undersea Warfare Center facility and a generous site for the Coast Guard Museum. New residential housing, of varying types is designed to permit flexibility; their number as well as their arrangement allows some to be easily used as "infill units" in existing blocks.

"Why can the neighborhood not be saved?" It certainly can be! The Coalition to Save the Fort Trumbull Neighborhood asks only for the City Council to amend the plan to retain a majority of the existing housing stock.

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*John Amos Stoffan is a retired architect and a Waterford resident.*